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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

CARL AND MELANIE SMITH, Plaintiffs, v. THE LAW OFFICES OF KIRK A. CULLIMORE, LLC, Defendant.	COMPLAINT Case No: 2:12-cv-01066-DBP JURY TRIAL DEMANDED
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I. INTRODUCTION

1. This is an action for damages brought by a pair of consumers for Defendant's violations of the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA").

II. JURISDICTION

2. Plaintiffs' claim for violations of the FDCPA arises under 15 U.S.C. § 1692k(d), and therefore involves a "federal question" pursuant to 28 U.S.C. § 1331.

III. PARTIES

3. Plaintiffs, Carl and Melanie Smith ("Plaintiffs"), are each a natural person residing in Utah County, Utah.

4. Defendant, The Law Offices of Kirk A. Cullimore, LLC, (“Defendant”) is a corporation engaged in the business of collecting debts by use of the mails and telephone. Defendant regularly attempts to collect debts alleged due another.

IV. FACTUAL ALLEGATIONS

5. Defendant is a “debt collector” as defined by the FDCPA, 15 U.S.C. § 1692a(6).

6. Plaintiffs are each a “consumer” as defined by the FDCPA, 15 U.S.C. § 1692a(3).

7. All activities of Defendant set out herein were undertaken in connection with the collection of a “debt,” as defined by 15 U.S.C. § 1692a(5).

8. Within the last year, Defendant took multiple actions in an attempt to collect a debt from Plaintiffs. Defendant’s conduct violated the FDCPA in multiple ways, including the following.

9. Using unfair or unconscionable means against Plaintiff in connection with an attempt to collect a debt, including failing to timely return previously garnished funds after an order was entered in case # 129101636, Fourth Judicial District Court, State of Utah demanding that Defendant return funds garnished by Defendant from Plaintiff. (§ 1692f)).

10. Threatening to take an action against Plaintiff that cannot be legally taken or that was not actually intended to be taken, including threatening to file suit against Plaintiffs by serving them with a summons and complaint twice, without actually filing said summonses and complaints. Defendant did actually file the lawsuit after serving a third summons and complaint on Plaintiff, but not until Plaintiff was lulled into a false sense of security by the previous fraudulent summonses and complaints that were not actually filed as the summonses unequivocally said they would be (§ 1692e(5)).

11. Using unfair or unconscionable means against Plaintiff in connection with an attempt to collect a debt, including submitting a proposed garnishee order ex parte case # 129101636, Fourth Judicial District Court, State of Utah (§ 1692f)).

12. As a result of the aforementioned violations, Plaintiffs suffered and continue to suffer injuries to Plaintiffs' feelings, personal humiliation, embarrassment, mental anguish and severe emotional distress.

13. Defendant intended to cause, by means of the actions detailed above, injuries to Plaintiffs' feelings, personal humiliation, embarrassment, mental anguish and severe emotional distress.

14. Defendant's actions, detailed above, were undertaken with extraordinary disregard of, or indifference to, known or highly probable risks to purported debtors.

15. To the extent Defendant's actions, detailed in paragraphs above, were carried out by an employee of Defendant, that employee was acting within the scope of his or her employment.

COUNT I: VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT

16. Plaintiffs reincorporate by reference all of the preceding paragraphs.

17. The preceding paragraphs state a *prima facie* case for Plaintiffs and against Defendant for violations of the FDCPA, §§ 1692e and 1692f.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that judgment be entered against the Defendant for the following:

A. Declaratory judgment that Defendant's conduct violated the FDCPA;

- B. Actual damages pursuant to 15 U.S.C. § 1692k;
- C. Statutory damages pursuant to 15 U.S.C. § 1692k;
- D. Costs, disbursements and reasonable attorney's fees for all successful claims, and any unsuccessful claims arising out of the same transaction or occurrence as the successful claims, pursuant to 15 U.S.C. § 1692k; and,
- E. For such other and further relief as may be just and proper.

PLAINTIFFS HEREBY REQUEST A TRIAL BY JURY

Dated this 16th day of November, 2012.

TRIGSTED LAW GROUP, P.C.

s/Joshua Trigsted
Joshua Trigsted
Attorney for the Plaintiffs